IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NOS :8853 and 8854 of 2006

Dated: 13th September 2006.

WRIT PETITION NOS :8853 of 2006

Between:
M/s Maruthi Constructions

..... PETITIONER

AND

The Government of Andhra Pradesh, Represented by its Special Chief Secretary, Revenue Department and another

.....RESPONDENTS

WRIT PETITION NOS :8854 of 2006

Between:
M/s B.Narayana Rao

..... PETITIONER

AND

The Commercial Tax Officer, Vijayawada

.....RESPONDENT

Counsel for the petitioner :

Dr.MVK Murthy for Mr.MVJK Kumar

Counsel for the respondents:

Mr.Krishna Koundinya, Standing Counsel for Commercial Taxes

THE HON'BLE SRI JUSTICE
J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

WRIT PETITION NOS :8853 & 8854 of 2006

ORAL COMMON ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

These two writ petitions are filed challenging the constitutionality of sub-section (4) of Section 5G of the A.P. General Sales Tax Act (after referred as 'the Act').

Section 5G of the Act was inserted by Act No.22 of 1995 with effect from 01-04-1995 and later was substituted by Act No.27 of 1996 with effect from 01-08-1996. Sub-section (4) came to be added to Section 5G by Act No.25 of 2002 with effect from 15-02-2003.

The facts in Writ Petition No.8553 of 2006

are taken as representative facts in these two writ petitions.

The petitioner is carrying on business as a works-contractor; like laying roads, etc. These contracts were awarded to the petitioner by the Government of Andhra Pradesh. In the process of executing such contracts, any contractor, like the petitioner, is necessarily required to use materials (goods); whether the goods so used in the execution of a contract, could be the subject matter of tax, on the ground that such transaction constitutes a sale of goods, was the subject of a great legal debate for a period of almost four decades.

Under Entry 54 of List-II of the Seventh Schedule, the States are authorized to levy tax on sale or purchase of goods, other than newspapers and such a power is required to be exercised, subject to the provisions of entry 92A of List I. The amplitude of the expression 'sale and purchase' of goods, occurring under Entry 54, fell for the consideration of the Courts, including the Supreme Court in a

number of decisions. In MADRAS STATE v. M/S GANNON DUNKERLEY & COMPANY (MADRAS) LIMITED[1], the Supreme Court held that the materials used by the contractor, such as the petitioner, could not be subjected to tax under the abovementioned Entry 54, as there was no sale of goods in such a transaction. To get over the decisions of the Courts, the Parliament amended the Constitution and Clause 29A came to be inserted in Article 366 by the Constitution (Forty-third Amendment) Act 1982, which, insofar as relevant for the present purpose, reads as follows:

"[(29A) "tax on the sale or purchase of goods" includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract; "

Pursuant to the amendment of the

Constitution, the State of Andhra Pradesh introduced Section 5F in the Act by Act No.22 of 1995, expressly authorizing levy of sales tax, on the transfer of property in goods either as goods or in some other form, involved in the execution of works contracts. Section 5F, insofar as it is relevant for the present purpose, reads as follows:

> " 5F. Levy of tax on transfer of property in goods involved in the execution of works contract : Notwithstanding anything contained in Section 5 or Section 6, every dealer shall pay a tax under this Act for each year, on his turnover of transfer of property in goods whether as goods or in some other form, involved in the execution of works contract, [at the rate of eight paise on every rupee of his turnover:]"

In substance, Section 5F authorizes levy of sales tax on the transfer of property in goods involved in the execution of goods contract. Such levy is on the turnover; in other words,

the value of such goods, used in a period of one year, relevant for the assessment. The rate of tax is prescribed at eight paise on every rupee of the turnover.

In exercise of the rule making power, the State of Andhra Pradesh under Rule 6(2) of the A.P.G.S.T. Rules, 1957 (herein after referred as 'the Rules'), stipulated the mode of determining the turnover contemplated under Section 5F of the Act. In substance, the Rule 6(2)§ says that the various amounts specified under the Rule shall be deducted, subject to the various conditions specified under the Rule.

Under Section 5G of the Act, the Legislature provided for an alternative mode of assessment of tax in the case of assesses, who are liable to pay tax under the provisions of Section 5F i.e., the works contracts. Section 5-G, insofar as it is relevant for the present purpose, reads as follows:

> "Subject to such conditions and in such

> circumstances as may be prescribed if a dealer, who executes any works contract other than the category of contracts notified by the Government under sub-section (2), so opts, the assessing authority of the area may accept, in lieu of the amount of tax payable by him under the Act during the year, by way of composition, [an amount at the rate of four paise on every rupee] of the total amount paid or payable to the dealer towards execution of the works contract: …….
>
> (4) Nothing contained in sub-section (1) shall apply to a dealer, who purchases or receives goods from outside the State for the purpose of using such goods in the execution of works contract."

In substance, the Section 5G says that any dealer, who is liable to pay sales tax under Section 5F, can opt for a different mode of assessment, i.e., instead of paying eight paise

on every rupee of his turnover, which is to be determined in accordance with the provisions of Section 5F read with Rule 6(2) referred to earlier, he may opt to pay tax at the rate of four paise on every rupee of the total amount paid or payable towards execution of the works contract, to the dealer, during the year relevant for the assessment. Such an option is available to the dealer/contractor, subject to the condition stipulated under the Rules. However, such an option is denied to the dealers under sub-

section (4), who utilizes the goods purchased or received from outside the State for the purpose of using the said goods in the execution of the works contract. In substance, sub-section (4) stipulates that if a dealer uses goods, which are not subjected to tax under the A.P.G.S.T. Act, in the execution of the works contract, he is not entitled for the option given under Section 5G of the Act, to be taxed under the lower rate. It is worthwhile mentioning here that sub-section (4) does not

even prescribe the minimum value of the goods purchased from outside the State of Andhra Pradesh. Therefore, if we take the case of a dealer, who receives an amount of rupees one crore during the relevant period, payable towards execution of a works contract and assume fifty lakhs is the value of goods utilised by such dealer and the balance towards the other heads and out of the value of the abovementioned fifty lakhs, the dealer purchases goods worth forty-nine lakhs ninty thousand within the State of Andhra Pradesh and the balance amount of ten thousand worth goods procured from outside the State of Andhra Pradesh, the dealer would loose the option given under Section 5F(1) of the Act. It is this sub-section (4) that is under challenge in this writ petitions.

The learned counsel for the petitioner argues that sub-section (4) is violative of Article 301 of the Constitution of India as a restriction of the freedom of trade, commerce and intercourse. It is also argued that excluding the

dealers, who use the goods procured from outside the State of Andhra Pradesh for the purpose of executing the works contracts, from the scheme of Section 5G(1) of the Act, is also violative of Articles 14, 19(1) (g) of the Constitution of India.

Article 301 declares that trade, commerce and intercourse, throughout the territory of India, shall be free. However, it further declares that such freedom is subject to the other provisions of the Part-XIII of the Constitution, in which Article 301 also occurs.

Article 302, authorizes the Parliament to impose such restrictions on the freedom of trade, commerce and intercourse between one State and another or within any part of the territory of India, if the Parliament is of the opinion that such a restriction is required in public interest.

Article 303 of the Constitution, further, stipulates that neither the Parliament nor the Legislature of a State shall have the power to make any law giving or authorizing the giving

of any preference or making any discrimination between one State and another. The declaration contained under Article 303 overrides the authority given to the Parliament under

Article 302, in view of the declaration made in the opening clause of Article 303. However, under sub-rule (2), the Parliament is enabled to make a law ignoring the mandate contained in sub-

article-I, if the Parliament is of the opinion and makes a declaration to that effect that it is necessary to do so for the purpose of dealing with the situation arising from scarcity of goods from any part of the territory of India.

Article 304 authorises the State Legislature to impose any tax on goods imported into the State from other States, but with a limitation that such a tax could be imposed, if only, similar goods manufactured or produced, are subjected to a similar tax.

The scheme of the abovementioned four Articles is that freedom of trade, commerce and

intercourse throughout the territory of India, shall be unfettered as the economic prosperity of the country depends on such free trade and commerce. The fact that in certain extraordinary situations, such a freedom is required to be restricted and the power to create such restriction is exclusively entrusted to the Parliament, is also taken note of. Restrictions can be in various forms, like prohibition, either total or partial, of goods from one State to other. Levy of tax creates a burden. Levy of tax on the inter-State sale or purchase of goods, being a burden, is mandated not to be discriminatory, thereby, creating a disincentive for inter-State sale or purchase of goods.

Whether Taxation, *per se*, is one of the restrictions, which is inconsistent with the freedom guaranteed under Article 301 of the Constitution is a question fell for the consideration of the Supreme Court in ATIABARI TEA COMPANY LIMITED v. STATE OF ASSAM AND OTHERS [2].

Justice Gajendra Gadkar, who spoke for three judges of the bench, with whom Justice Shah concurred in a separate judgment, held at Paragraph No.51;

> "Thus the intrinsic evidence furnished by some of the Articles of Part XIII shows that taxing laws are not excluded from the operation of Art.301; which means that tax laws can and do amount to restrictions freedom from which is guaranteed to trade under the said Part……"

His Lordship further held:

> "Thus considered we think it would be reasonable and proper to hold that restrictions freedom from which is guaranteed by Art.301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade. Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that

would fall within the purview of Art.301."

Sinha, C.J, in his dissenting judgment, repelling the contention that all taxation is a restriction on the freedom guaranteed under Article 301, observed at Paragraph 14 as follows:

" ..... It is almost impossible to think that the makers of the Constitution intended to make trade, commerce and intercourse free from taxation in that comprehensive sense....."

Again at Paragraph No.16, his Lordship observed;

" In my opinion, another very cogent reason for holding that taxation simpliciter is not within the terms of Art. 301 of the Constitution is that the very connotation of taxation is the power of the State to raise money for public purposes by compelling the payment by persons, both natural and

> juristic, of monies earned or possessed by them, by virtue of the facilities and protection afforded by the State……. Thus public purpose is implicit in every taxation, as such. Therefore, when Part XIII of the Constitution speaks of imposition of reasonable restrictions in public interest, it could not have intended to include taxation within the generic term ‘ reasonable restrictions’.”

In INDIAN CEMENT AND OTHERS v. STATE OF ANDHRA PRADESH AND OTHERS [3], the Supreme Court at Paragraph No.12 held as follows:

> “ There can be no dispute that taxation is a deterrent against free flow. As a result of favourable or unfavourable treatment by way of taxation, the course of flow of trade gets regulated either adversely or favourably. If the scheme which Part XIII guarantees has to be preserved in national

> interest, it is necessary that the provisions in the Article must be strictly complied with……."

In the present case, there is no levy of tax on the goods purchased from out of the State, by the dealers (the petitioners) and utilized in the execution of the works contracts. The impugned provision only seeks to withdraw an option to such dealers, which is otherwise available to them under Section 5F, if the dealer used all the material procured within the State of Andhra Pradesh in the execution of the works contracts. Therefore, going by the majority judgment of the Supreme Court in ATIABARI TEA COMPANY'S case cited (2) supra, there is no direct or immediate restriction by way of taxation on the freedom of Trade and Commerce, guaranteed under Article 301 of the Constitution.

Whether the exclusion of the option that is made available under Section 5G of the Act, would, in any other way, violate the freedom guaranteed under Article 301, is required to be

examined.

The learned counsel for the petitioners argued relying on the following judgments;

1. 25 APSTJ 254,
2. AIR 1988 SC 567,
3. AIR 1986 SC 63,
4. AIR 1864 SC 1006,
5. AIR 1987 SC 1922 and
6. 1970 STC 52.

The provision, such as the one impugned herein, would violate the freedom guaranteed under Article 301 of the Constitution.

In ANAND COMMERCIAL AGENCIES v. COMMERCIAL TAX OFFICER, VI CIRCLE, HYDERABAD AND OTHERS [4], the Supreme Court was considering the constitutionality of the Entry 24 of the First Schedule to the A.P.G.S.T. Act. The said Entry provided groundnut oil or refined oil imported from outside the State of Andhra Pradesh, to be taxable at a higher rate than the groundnut or refined oil, locally manufactured. The Supreme Court upheld the challenge and came to the conclusion that such a discriminatory rate of

taxation is violative of freedom of trade and commerce constitutionally protected under Article 301 of the Constitution of India.

In THE INDIAN CEMENT AND OTHERS v. STATE OF ANDHRA PRADESH AND OTHERS[5], the Supreme Court was considering two notifications of the State of Andhra Pradesh; one under the C.S.T. Act and the other under the A.P.G.S.T. Act, which, in substance, provided a lower rate of tax in favour of the local manufacturers, when such cement is sold either to the manufacturers of the cement products or in the case of inter-State sales. In other words, cement manufactured outside the State of Andhra Pradesh, but used by the manufacturers of the cement products in the State of Andhra Pradesh, is made taxable at a higher rate; (2) cement manufactured in the State of Andhra Pradesh, to sell outside the State of Andhra Pradesh, is also made liable for a lower rate of tax. The notifications, therefore, created a preferential treatment in favour of the

manufacturers, covered by the State notifications, in substance, making purchases of some manufacturers outside the State of Andhra Pradesh more expensive. The Supreme Court held that such variations affect the freedom of trade and commerce and create a local preference, contrary to the Article 13 of the Constitution.

In H. ANRAJ v. GOVERNMENT OF TAMIL

NADU [6], the Supreme Court was considering a situation, where under the Tamil Nadu General Sales Tax Act, lottery tickets of the various States are subjected to sales tax in the State of Tamil Nadu, whereas the lottery tickets of the State of Tamil Nadu are exempted from such levy, and held as follows:

> " ……..that because of the Notification imported goods are at a disadvantage as compared to indigenous goods, both being of identical type. The real question is whether the direct and immediate result of the

impugned Notification is to impose an unfavourable and discriminatory tax burden on the imported goods 9here lottery tickets of other States) when they are sold within the State of Tamil Nadu as against indigenous goods (Tamil Nadu Government lottery tickets) when these are sold within the State from the point of view of the purchaser and this question has to be considered from the normal business or commercial point of view and indisputably if the question is so considered the impugned Notification will have to be regarded as directly and immediately hampering free flow of trade, commerce and intercourse. Discriminatory treatment in the matter of levying the sales tax on imported lottery tickets which are similar to the ones issued by the State Government so as to hamper free flow of trade, commerce and intercourse is writ large on the fact of the impugned Notification and in my view the same is clearly

violative of Art.301 read with Art.304(a) of the Constitution."

In STATE OF MADHYA PRADESH AND ANOTHER v. BHAILAL BHAI AND OTHERS [7], the Supreme Court was considering the two notifications issued under the Madhya Bharat Sales Tax Act, which provide for a levy of sales tax on tobacco leaves, manufactured tobacco, etc., used for Bidi manufacturing, if such goods are imported into the State of Madhya Bharat from outside the State, whereas the same goods locally procured, were not subjected to any such tax. The Supreme Court came to the conclusion that such a levy directly infringes the freedom of trade and commerce guaranteed under Article 301 of the Constitution.

In M/S ASSOCIATED TANNERS, VIZIANAGARAM, A.P. v. COMMERCIAL TAX OFFICER, VIZIANAGARAM, ANDHRA PRADESH AND OTHERS [8], the Supreme Court was considering the legality of a

provision of the A.P.G.S.T. Act, which provided for levy of tax on the sale of hides and skins brought from outside the State and tanned within the State, whereas, raw hides and skins, if purchased locally and tanned, there was no tax, only un-tanned hides and skins were subjected to sales tax and came to the conclusion.

In WESTON ELECTRONIKS AND ANOTHER v. STATE OF GUJARAT AND ANOTHER[9], the Supreme Court was considering the case under the Gujarat Sales Tax Act, wherein, television sets, whether locally manufactured or imported from other States other than the Gujarat were uniformly taxed till 1981. Subsequently, by a notification, the rate of tax, on the television sets locally manufactured, was reduced to one per cent, whereas imported television sets were liable to tax at ten per cent. The Supreme Court held such a differential taxation is violative of the freedom under Article 301.

The learned Special Standing Counsel for

Commercial Taxes relied upon a case in M/S V.GURAVIAH NAIDU & SONS ETC., v. STATE OF TAMIL NADU AND ANOTHER [10], wherein the Supreme Court, *inter alia*, was considering Entry 7(b) of the Second Schedule to the Madras General Sales Tax Act, which provided for a higher rate of tax on dressed hides and skins, which were not subjected to tax under the Act as raw hides and skins and repelled the challenge.

> "Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or

> fiscal barrier and thus impede the free flow of inter-State trade and commerce. The question as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied…."

The question before the Supreme Court in M/S VRAJLAL MANILAL & CO. AND ANOTHER v. STATE OF MADHYA PRADESH AND ANOTHER [11], was whether taxing the sales and purchases of Tendu leaves on a higher rate than that of in the neighboring States would be violative of Article 301. The Supreme Court answered in the negative.

In THE STATE OF KERALA v. A.B.ABDUL KADIR AND OTHERS [12], the Supreme Court, at Paragraph No.9, held as follows:

> " As we have already pointed out it is well established

by numerous authorities of this Court that only such restrictions or impediments which directly or immediately impede the free flow of trade, commerce and intercourse fall within the prohibition imposed by Art.301. ***A tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so. Every case must be judged on its own facts and in its own setting of time and circumstances."***
(emphasis supplied)

The Supreme Court in M/S VIDEO ELECTRONICS PVT. LTD. AND ANOTHR v. STATE OF PUNJAB AND ANOTHER [13], *inter alia*, was considering a notification issued by the Punjab Government, differentiating between manufacturers of electronic goods out side the State and within the State. The Supreme Court upheld the notification on the ground of peculiar conditions in the Punjab existing at that point of time and justified that

such a differential rate of taxation, as authorized by Article 304 of the Constitution of India. At Paragraph No.36, the Supreme Court held as follows:

> " A backward State or a disturbed State cannot with parity engage in competition with advanced or developed States. Even within a State, there are often backward areas which can be developed only if some special incentives are granted. If the incentives in the form of subsidies or grant are given to any part of units of a State so that it may come out of its limping or infancy to compete as equals with others, that, in our opinion, does not and cannot contravene the spirit and the letter of Part XIII of the Constitution. However, this is permissible only if there is a valid reason, that is to say, if there are justifiable and rational reasons for differentiation. If there is none, it will amount to hostile discrimination. Judged in this light, despite the submissions

> of Mr. Sanjay Parikh and Mr. Vaidyanathan, we are unable to accept the contentions that the petitioners sought to urge in this application."

From an examination of the above decisions relied upon by the learned counsel for the petitioners that in each one of these cases, we find that there is a positive decision by the State concerned to the effect that locally manufactured goods should suffer a lower rate of tax than similar goods imported from outside the State, which was found to be violative of the freedom guaranteed under Article 301. The incidence of such tax is directly on the goods, which are the subject matter of inter-State trade and commerce.

In contrast, the impugned provision under Section 5G(4) does not impose any such tax. On the other hand, it seeks to bar an option otherwise available to a dealer falling under Section 5F. The utilization of goods procured from outside the State of Andhra Pradesh in

the execution of the works contract only makes the dealer ineligible for being assessed at a lower rate of tax, though such lower rate of tax is levied on the total turnover of the dealer a higher amount of than the amount contemplated under Section 5F, i.e., the amount received or payable for the year, for the work done, which amount includes not only the actual value of the goods utilized, but also certain other items of expenditure incurred during the course of execution of the contract like labour charges, etc., specified under Rule 6(2), noticed earlier.

We are conscious of the fact that though the provision facially seeks to impose a higher burden of tax on the goods which are otherwise also liable to tax under the A.P.G.S.T. Act, but does not impose any tax on the goods procured from out of the State of Andhra Pradesh; such a device by the Legislature, in a given case, may, itself be a disincentive for utilization of goods procured from out of the State of Andhra Pradesh; if it

can be demonstrated that by adopting such alternative mode of assessment, the dealer would be mulcted with extra financial burden. In the absence of any specific demonstration before this Court that the operation of the impugned sub-section (4) of Section 5G of the Act is, in fact, likely to impose a higher tax burden on the dealer, it would be difficult for this Court to conclude that the impugned provision creates a direct or immediate restriction on the freedom of trade guaranteed under Article 301 of the Constitution.

The next question is whether the impugned provision Section 5G(4) creates a disincentive for utilization of goods procured from out of the State of Andhra Pradesh. Its already noticed from the scheme of Section 5F and 5G that they provide two distinct modes of assessment of the turnover of those dealers who are liable to tax under Section 5F of the Act. In substance, the turnover contemplated under Section 5F is the value of the goods transferred during the course of the execution

of the works contract which is to be determined after deducting the various amounts representing the value of the labour, planning etc. In the alternative mode of assessment under Section 5G, Legislature provided that if a dealer is willing to be assessed on the gross receipts which include the cost component of various other factors like labour, planning etc., which do not strictly form part of the value of the goods transferred, the dealer is required to be taxed at a lower rate because he is agreeing to suffer the tax on the value of the various components which are not legally amenable to taxation under Entry 54 of List II of VII Schedule. Obviously, the alternative mode of assessment provided under Section 5G is a device for the convenience of both the administration of the State and also the dealer because in the case of an assessee opting for the mode of assessment under Section 5G, both the assessee and the State are relieved of the ordeal of producing proof of the value of various non-taxable components from out of

the gross receipts of the dealer and the State is relieved of the burden of meticulously examining the information furnished by the dealer.

But, the question still remains whether such a provision is violative of Article 14 of the Constitution of India on the ground from out of the same class of dealers who are taxable under Section 5F of the APGST Act, some are allowed an option for a specified mode of assessment provided under Section 5G and others are debarred from availing that option on the ground that they utilized goods procured from out of the State of Andhra Pradesh.

Learned counsel for the petitioner argued that though such sub-classification of the dealers who otherwise form single class for the purpose of Section 5F is not totally prohibited, the burden that such sub-classification bears a reasonable nexus to some legitimate purpose is on the State. Though it is a definite case of the petitioners

that the impugned provision is violative of Article 14 of the Constitution of India, no specific reason is given in the counter affidavit filed by the State indicating any legitimate purpose that is sought to be achieved by making such a sub-classification.

We see substantial force in the submission made by the learned counsel for the petitioner. The counter filed by the State is totally silent on this aspect nor could the learned Government Pleader appearing for the respondents could bring to the notice of this Court about the existence of any legally tenable purpose that could be achieved by the impugned provision.

In the circumstances, we are of the opinion that the impugned provision is violative of Article 14 of the Constitution of India and is therefore required to be declared unconstitutional.

Writ Petitions are therefore allowed.

But, in the circumstances without costs.

(J.CHELAMESWAR, J)

(D.APPA RAO,J)

13th September, 2006.
Mrk/Knk

[1] AIR 1958 SUPREME COURT 560

§ " (2) Notwithstanding anything contained in sub-rule (1) the tax under Section 5-F, shall be levied on the turnovers of a dealer who transfers property in goods, whether as same goods or in some other form, involved in the execution of works contract. In determining the turnover of a dealer liable to tax, the amounts specified in clauses (a) to (l) shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer.

(a) Labour charges for execution of the works;

(b) Amount paid to a sub-contractor for the execution of works contract provided such a sub-contractor is a registered dealer **and that turnover is included in the return filed by him before the assessing authority concerned;**

(c) Charges for planning, designing and architect's fees;

(d) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) Cost of consumables such as water, electricity, fuel etc., used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract;

(f) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) Other similar expenses relatable to supply of labour and services;

(h) Profit earned by the contractor to the extent it is relatable to supply of labour and services;

(i) All amounts for which goods exempted by the notification under Section 9(1) are transferred in execution of works contract **provided the**

goods are transferred in the same form as they were purchased;

(j) All amounts for which for which the goods specified in the Third Schedule are transferred by a dealer when such sales are exempt from the tax liable, under any of the provisions of the Act, **provided, that the goods are transferred by the dealer as the same goods as they were purchased;**

(k) All amount for which the goods specified in the Fourth Schedule are transferred by the dealer in execution of the works contract **provided that the goods are transferred as the same goods as they were purchased;**

(l) Turnover of goods involved in the execution of works contract which are transferred in the course of inter-State trade or commerce under Section 3 or transferred outside the State under Section 4 or transferred in the course of import or export under Section 5 of the Central Sales Tax Act, 1956"

[2] AIR 1961 SUPREME COURT 232

[3] AIR 1988 SUPREME COURT 567

[4] 25 APSTJ 254

[5] AIR 1988 SUPREME COURT 567

[6] AIR 1986 SUPREME COURT 63

[7] AIR 1964 SUPREME COURT 1006

[8] AIR 1987 SUPREME COURT 1922

[9] 1970 STC 52

[10] AIR 1977 SUPREME COURT 548

[11] AIR 1986 SUPREME COURT 1085

[12] AIR 1970 SUPREME COURT 1912

[13] AIR 1990 SUPREME COURT 820